IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 21433 of 2004

Between:

S. Mahaboob Shareef, S/o. S. Md.Ismail,
Moinuddin Siddiqui Upper Primary School, Sirvel,
Kurnool District.

..... PETITIONER

AND

1 The District Educational Officer, Kurnool, Kurnool District.
2 Suiddiqui Aided Schools Committee, Sirvel, Kurnool District,
rep. by its President/Secretary Sri K. J. Saheb Basha- Siddiqui,

R/o. Sirvel, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue an order or direction, more particularly one in the nature of writ of Mandamus, declaring the order of the 1st respondent in Rc.No.6974/C4/04, dt.18.10.2004 as arbitrary, illegal, discriminatory, misconceived, *malafide* and violative of Articles 14, 16 and 21 of the Constitution of India, and consequently set-aside the same, and direct the respondents approve the absorption of the Petitioner's services into the aided vacancy at Moinuddin Siddiqui Aided Upper Primary School, Sirvel with effect from 1.7.2004 with all the benefits, and grant such other relief as this Hon'ble High Court may deem fit and proper.

Counsel for the Petitioner: MR.KASAJAGANMOHAN REDDY

Counsel for the Respondent No.1: GP FOR SCHOOL EDUCATION

Counsel for the Respondent No.2: MR.T.DURGA REDDY.

The Court, at the admission stage, made the following:

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO: 21433 of 2004

ORDER:

This writ petition has been filed to declare the order dated 18-10-2004 issued by the 1st respondent-District Educational Officer, Kurnool, as illegal and arbitrary.

Briefly noted facts and circumstances leading to the filing of the writ petition are that:

The petitioner is working as Secondary Grade Teacher in Moinuddin Siddiqui Aided Upper Primary School (for brevity 'MSAUP School'), Sirvel, which was established by the 2nd respondent-Siddiqui Aided Schools Committee (for brevity 'Committee'). The 2nd respondent-Committee is running fourteen schools in Kurnool District. The President of the 2nd respondent-Committee addressed a letter to the 1st respondent to shift the two posts to the MSAUP School, Sirvel. The 1st respondent issued consequential proceedings, permitting the Management of the 2nd respondent-Committee to shift the two Secondary Grade Teacher posts, one along with the candidate and the other vacant caused due to retirement.

The petitioner is a senior most Secondary Grade Teacher, working in the school of 2nd respondent-Committee. The Management of the 2nd respondent-Committee was pleased to absorb the services of the petitioner into the newly shifted Aided post and the petitioner attended duty on 01-07-2004. But, the 1st respondent issued the impugned order dated

18-10-2004 directing the 2nd respondent-Committee to submit their proposals, and raised two objections which are not tenable. Hence, the present writ petition.

The 2nd respondent-Committee filed counter affidavit almost admitting the contentions raised in the writ petition. Hence, it is not necessary to reproduce the same.

In spite of giving several opportunities, the 1st respondent did not file any counter affidavit.

Perused the material available on record.

The learned counsel for the petitioner contended that in the impugned order, the 1st respondent raised two objections, with regard to the G.O.Ms.No.49, Edn., dated
26-02-1998, it was superceded by G.O.Ms.No.39, dated
03-05-2002, and that justifications report was already submitted by the 1st respondent and with regard to the 2nd objection, without permission of the competent authority as per the G.O.NO.75, dated 23-9-2002, the absorption was made from un-aided post to the aided vacancy, it is not applicable to the present facts of the case and therefore, the two objections raised by the 1st respondent in his proceedings dated
18-10-2004 are totally unsustainable.

To the similar effect, the learned counsel for the 2nd respondent argued the matter.

As seen from the proceedings dated 26-06-2004, it is clear that the 1st respondent accorded permission to the Correspondent of the 2nd respondent-Committee to transfer the resultant vacant posts of two Aided Secondary Grade Teachers after winding up of Siddiqui Aided Urdu Elementary School, Cement Nagar to MSAUP School, Sirvel, wherein it is also stated that “these posts are more essential i.e., one Aided Secondary Grade Teacher. for Urdu Medium along with candidate Sri C.Fazlur Rahiman who is already working on deputation in MSAUP School, Sirvel, vide this Office proceedings Rc.No.5780/B4/99, dated 12-12-2000 and another vacant Aided Secondary Grade Teacher post for Telugu Medium of parallel sections of Moinuddin Siddiqui Aided Urdu Upper Primary School, Sirvel. The Correspondent, is requested to take necessary action in the matter as per norms.” Thereafter, the

2nd respondent-Committee issued proceedings dated 29-06-2004, absorbing the petitioner into the aided Secondary Grade Teacher post of Telugu medium parallel sections at MSAUP School, Sirvel.

The Deputy Inspector of Schools also in his proceedings dated 03-07-2004, addressed to the 1st respondent, submitted the justifications report for absorbing the petitioner from unaided Secondary Grade Teacher to aided Secondary Grade Teacher post. Even after passing of impugned proceedings, the 2nd respondent also addressed a letter to the 1st respondent dated 27-10-2004 for absorption of the petitioner in the aided vacant of Secondary Grade Teacher post (Telugu).

Sub-rule (iii) of Rule 7 of G.O.Ms.No.75 Edn, dated 23-09-2003, relates to appointment of one person among the candidates working in the sanctioned un-aided post as per the seniority in the un-aided post. The seniority list, prepared by the 2nd respondent-Committee and the same was counter signed by the Deputy Inspector of Schools, Urdu Range, Kurnool, dated 09-07-2004 would go to show that the petitioner is the senior most employee. Therefore, the 2nd respondent-Committeee has fulfilled the condition under sub-rule (iii) of Rule 7 of G.O.Ms.No.75 Edn. Dated 23-09-2003. So, the ground in this aspect taken by the 1st respondent is untenable.

With regard to the second ground, the justifications report was already submitted by the Deputy Inspector of Schools, Kurnool, on 09-07-2004, but, the same has not been considered by the 1st respondent in accordance with law. Later, the two juniors who are working in the same school were absorbed by the 1st respondent himself in his proceedings, dated 25-09-2004. Therefore, the two grounds raised for returning the proposals, in the proceedings of the 1st respondent dated 18-10-2004, are totally unsustainable.

In view of the above, it is suffice to say that the 1st respondent has to take appropriate decision in pursuance of the proposals submitted by the 2nd respondent-Committee dated 27-10-2004 without adverting to the two conditions raised in the impugned order, dated 18-10-2004. Therefore, the 1st respondent shall take appropriate decision in absorbing the petitioner into newly

shifted aided post, in accordance with law, within a period of four weeks from the date of a receipt of a copy of this order.

With the aforementioned directions, the writ petition is allowed without any order as to costs.

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March 16, 2005

Note:

Issue C.C. in one week.

B/o.

KVR

To

1 The District Educational Officer, Kurnool, Kurnool District.
2 The President/Secretary: Sri K. J. Saheb Basha- Siddiqui,

R/o. Sirvel, Suiddiqui Aided Schools Committee, Sirvel, Kurnool

District.

3 Two C.Cs. to G.P. for School Education, High Court Buildings,

High Court of A.P., Hyderabad (OUT)

4 Two C.D Copies.